IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 12088 of 2007(L)

OS.424/2005 of Munsiff's Court,CHALAKUDY
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PETITIONERS:
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1. SREEDEVI ANTHARJANAM,W/O.LATE NEELAKANDAN NAMBOOTHIRI,AGED 58,MAPRAMPILLY MANA, KALLUR DESOM,KALLUR VADAKKUMMURI VILLAGE, MKUNDAPURAM TALUK.

2. AJITH,S/O. -DO- AGED 29, IN -DO-

3. SREEJA,D/O. -DO- AGED 24, IN -DO-

4. VISHNU NAMBOODIRI,S/O.RAMAN NAMBOODIRI, IN -DO-

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS:
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1. PADUTHOLE YOGAM,REPRESENTED BY NEELAKANDAN NAMBOODIRI,S/O.THURANELLOORE MANAKKAL SUBRAMANIAN NAMBOODIRI,AGED 70,ERAYAMKUDI DESOM, KALLUR THEKKUMMURI VILLAGE,MUKUNDAPURAM TALUK.

2. K.P.HARIHARAN NAMBOODIRI,S/O. PARAMESWARAN NAMBOODIRI,KIZHAKKEDATH MANA, PARAKKADAVU ALUVA.

BY ADV. SRI.T.N.MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 12088/07

Appendix

Petitioners' Exts:

Ext.P1 dated 21.1.2006, true copy of the written statement filed by the petitioners in OS 424 of 2005, Munsiff's Court,Chalakkudy.

Ext.P2 dated 14.3.2006, true copy of the report filed by the Advocate Commissioner in OS 424 of 2006, Munsiff's Court, Chalakkudy.

Ext.P3 dated 2.1.2007, true copy of the order passed by the Munsiff's Court, Chalakkudy, in OS 424 of 2005.

M.N.Krishnan, J.

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W.P(C).No.12088 of 2007

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Dated this the 20th day of November, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Munsiff's Court, Chalakkudy in O.S.No.424 of 2005. The issue decided by the court relates to the question of correctness of the court fee. The suit is one for recovery of possession on the strength of title. Plaintiff has valued the subject matter under Section 30 of the Court Fees Act (hereinafter referred to as "the Act"). When it is under Section 30 of the Act and if it is an agricultural land capable of yielding 10 times annual profits minus revenue shall be the criteria and when there is a building 10 times assessed value and if it is neither an agricultural land nor a building Section 7(3)(a) of the Act is to be applied. As far as this case is concerned, it is Sections 7(2) and 7(3) of the Act that will be applicable.

2. The Commissioner has visited the property and had given

some details, which would show that there are 29 coconut trees, 65 areca trees, 11 nutmeg trees besides non-yielding trees, mango trees and jack fruit trees in the property. He had approximately estimated the income derived from the property. When it is so, the court was not correct in holding that what is stated in the plaint alone is to be taken into consideration for fixing the correctness of the court fee.

3. The above order suffers from serious infirmities and therefore it is set aside and the matter is remitted back to the trial court with a direction to consider issue No.4 afresh taking into consideration the Commissioner's report to find out the profits derivable from the property and then fix the value and direct the plaintiff to pay court fee in accordance with law under Section 30 of the Act. Parties are directed to appear before the court below on 19.12.2007.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 20/11